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ABSTRACT

The report summarizes the Federal Communications Commission's (FCC) rulemaking of February 3, 1972 for cable television (CATV) concerning what channels must be carried in certain categories of broadcast markets, use of non-broadcast channels, technical standards, and federal/state/local regulatory relationships. The report highlights the rule that all new systems in the largest 100 markets must provide a minimum capacity of 20 channels, as well as a capability for two-way transmissions. The report makes clear that under the new rules CATV systems must provide at least one non-broadcast channel for every broadcast channel, and that three of the non-broadcast channels must be for public access, education and local government; all public access channels must be available first-come first-serve, with no Fairness Doctrine restrictions, and no censorship allowed by the CATV operator except to prohibit obscenity and lotteries. The report describes minimum standards for CATV franchises, and the steps a CATV operator must take to get the required FCC certificate of compliance. (MG)

ED 063784

THAW

New Rules to End The Cable TV Freeze

National Cable Television Association, Inc.

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EM 000 990

ncta

memorandum

NATIONAL CABLE TELEVISION ASSOCIATION, INC.
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March 6, 1972

This memorandum should be associated with the recently-sent booklet on the new FCC rules, entitled, "Thaw." It reflects two corrections in statements made in that booklet. Watch for further legal letters as various interpretations of the new rules become available.

(1) The new carriage rules do not apply to signals being carried or authorized to be carried before March 31, 1972. Non-network exclusivity protection need not be provided against imported stations actually being carried as of March 31, 1972. Thus, to be grandfathered as to exclusivity the signal must, in fact, be carried. "Thaw" stated that the broader carriage grandfathering rule also applied to exclusivity.

(2) The interim radio carriage rule should read as follows: no cable system can begin to carry a distant radio signal (more than 75 miles away) into a community of less than 50,000 people having at least one radio station, nor can a distant radio signal be newly imported into any community unless all radio stations of the same type are carried. This will be enforced through the certification process.

National Cable Television Association, Inc.

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION
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February 23, 1972

Dear Cable Operator:

The FCC's new rules for cable are now a reality. There is little doubt this complex and lengthy set of rules will be the basis for regulation of our industry for some time to come.

Accordingly, we have prepared this analysis of the FCC's rules to aid you in gauging both their initial impact and the continuing effect of the rulemaking on your future operations. We are also enclosing a complete text of the FCC document which together with this booklet will serve as a useful reference. NCTA is pleased to make these documents available to association members only at no charge.

Undeniably, we are proud of our part in urging the FCC to adopt new rules. The effort to obtain an end to the freeze has been the association's primary goal for years. Your staff and various industry leaders have labored long and hard in this effort. They deserve a great deal of credit for bringing the rules to fruition.

Certainly, we are aware and concerned that unnecessary restrictions still exist in the FCC's rules for cable. These rules are obviously cautious first steps by the Commission and fall short of what we would consider to be ideal.

At the same time the rules represent major accomplishments:

The existing industry is protected -- not against change -- but against a radical readjustment of its way of doing business;

The economic viability of existing manufacturing and operating companies has been given a boost which in both the long and short run will aid us all;

918 Sixteenth Street, N.W., Washington, D.C. 20006 • (202) 466-8111

The way has been cleared to bring cable service to millions of additional people heretofore barred from obtaining our service;

The industry and the FCC now have an opportunity to gain practical experience upon which future decisions can be based as we evolve into a wired nation.

Our future is now in our own hands. The record we build in the next few years will in large measure determine the speed and extent of additional relaxation of FCC restrictions. As your national association, we will continue to work toward an environment conducive to the growth and development of cable communications in the public interest.

We hope this analysis will be useful to you. As always, we encourage you to write and call us for answers to any questions you may have.

Sincerely,

John Gwin
National Chairman

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OUTLINE

This booklet summarizes the Commission's lengthy document which was released February 3, 1972. In addition to the detailed summary which follows, this brief outline of the major provisions of the new rules will hopefully be a useful reference.

REQUIRED SIGNAL CARRIAGE

Market Definition:	A television market is defined as a circle with a 35-mile radius measured from a point within a community with a television station.
Top-100 Markets:	CATV systems in the top 100 markets must carry all television stations within 35 miles of the system's community, Grade B or better ETV stations, local 100-watt translators, and stations passing a significant viewing test.
Markets 101 and Below:	All the above plus Grade B signals from other small markets.
Outside Any TV Market:	A system located outside of any television market must carry all Grade B signals, ETV stations within 35 miles, local translators, and significantly viewed stations.

OTHER SIGNALS ALLOWED

An adequate service concept is written into the carriage rules in order to permit some distant signal importation.

Markets 1-50:	Adequate service is defined as three full network signals plus three independent signals. Any importation must meet leapfrogging restrictions. Two additional bonus independents can be brought in, although this number is reduced by any signal needed to meet the adequate service formula.
Markets 51-100:	The adequate service formula is three full network signals plus two independent signals. The two extra bonus independents also apply here.
Markets 101 and Below:	The formula is three networks plus one independent, and no extra signals.
Outside Any TV Market:	Systems outside of any market have no importation restriction.

Educational and non-English language stations do not count against a system's quota.

NON-DUPLICATION PROTECTION

The rules provide various forms of protection from local stations. In all markets, there is simultaneous non-duplication for network programming, with special relief for broadcasters with time zone problems.

EXCLUSIVITY

Markets 1-50:	Independent stations receive one year pre-clearance on new product and run-of-contract in the market for all programs.
Markets 51-100:	Off-network series receive one year's protection from first showing.

First-run series receive two years.

First-run non-series and feature films receive two years from first availability.

Other programs receive one day protection after first non-network broadcast in the market or one year from date of purchase, whichever comes first.

Markets 101 and Below: There is no exclusivity for independents below the top 100 markets.

Program Substitution: Blacked-out time slots can be filled by unprotected programs imported from anywhere. The burden of letting the cable operator know which programs to protect is generally on the television station.

Grandfathering: The carriage and protection rules outlined above do not apply to systems in operation or authorized to carry signals before March 31, 1972.

MINIMUM CHANNEL AND TWO-WAY CAPACITY

All new systems in the top 100 markets must have a minimum channel capacity of 20 channels and two-way capacity built-in.

Nonbroadcast Channels: There must be at least one nonbroadcast channel for every broadcast channel. Three of the nonbroadcast channels must be dedicated to public access, education and local government. Beyond origination by the operator, all other nonbroadcast

channels must be available for leasing. All of these access channels must be available on a first-come, nondiscriminatory basis, with no censorship allowed beyond obscenity and lottery prohibitions. The fairness doctrine, etc. only applies to the origination channel.

Grandfathering: Existing systems in the top 100 markets have five years to comply with these requirements. Localities outside of the top 100 markets can require access channels, too, but only as far as the FCC has gone in the top 100.

FEDERAL/STATE/LOCAL RELATIONSHIPS

The Commission has structured a dual system of regulation, with franchising and rate supervision being the principal local responsibilities. An advisory committee will be constituted in this area. Certain minimum standards for franchises which must be met were established.

Franchise Requirements:

A public proceeding leading to award of the franchise.

A franchise period of reasonable duration (perhaps a 15 year maximum).

A requirement for equitable construction in the franchise area within a reasonable time schedule.

A reasonable franchise fee (any thing over 3% must be justified).

A local complaint procedure must be set up.

Rates must be supervised.

Grandfathering:	Systems in operation prior to March 31, 1972, have 5 years to comply, or when their current franchise expires, whichever comes first.
Certification:	All new cable systems must obtain a certificate of compliance from the FCC, and all existing systems have until March 31, 1977, or the expiration date of their current franchise, whichever comes first. Various documents must be submitted, the principal goal being to insure compliance with the foregoing rules. Objections can be filed, although the Commission indicates a "go-no go" system of action. Until a rulemaking is completed, an interim fee of $35 per community must be submitted with each application for a certificate ($10 per community after the first where commonly-owned and a single headend).

TECHNICAL STANDARDS

Certain minimum technical standards and radiation limits have been adopted. A need for other standards was identified, and to that end, further proceedings were promised and an advisory task force is to be formed.

OTHER RULEMAKINGS

Finally, rulemakings were initiated looking toward regulations governing the importation and carriage of radio signals and the carriage of professional sporting events.

SIGNAL CARRIAGE

Minimum Service The new cable television rules introduced the concept of a minimum service complement in all television markets. A television market is defined as a zone circumscribed by a circle with a 35-mile radius measured from a reference point of a community designated to a television licensee. With respect to the 50 largest television markets, the minimum service complement is three full network signals, three independent television signals, at least one educational television signal, an unlimited number of non-English television signals, plus two television signals which, for want of a better work, can be called wild card signals.

In markets 51 to 100, the minimum service complement is three full network television signals, two independent television signals, at least one educational television signal, an unlimited number of non-English television signals, and two wild card signals.

In markets 101 and smaller, the minimum service complement is three full network television signals, one independent television signal, at least one educational television signal and an unlimited number of non-English television signals. No wild card signals are permitted. Systems located outside of any market (i.e., 35-mile zone) have unlimited importation rights.

The Commission's definition of network station provides that such station must generally carry 85% of the primary network programs in prime time. Independent stations are defined as those which generally carry less than 10 hours of network programming in prime time per week.

Television stations which broadcast non-English language programs on a full-time basis and educational television signals do not count in the minimum service complement.

In order to determine the number of distant signals which can be imported, a CATV system must first ascertain whether the minimum service complement is available in the CATV community off-the-air. Local signals are generally those of television stations within 35 miles from the CATV community. In some cases Grade B television contours and signals which are significantly viewed in the county where the CATV system is located are also defined as local signals.

Significant Viewing Test For purposes of determining which signals are significantly viewed, the Commission adopted one standard for network television signals and a different standard for independent television signals. For network signals there must be a 3% viewing share and 25% net weekly circulation. For independent television stations there must be a 2% viewing share and 5% net weekly circulation. As a rule of thumb, viewing share indicates the intensity of viewer interest and net weekly circulation indicates the technical availability or viewability of a television station in the survey area. Viewing share statistics are based upon ARB 1971 Television Circulation Share of Hours for counties which have 10% or less CATV saturation, and ARB 1971 Non-CATV Circulation and Share of Hours for counties which have more than 10% CATV penetration.

The rules provide that no special surveys to determine viewing share will be allowed by the Commission, regardless of whether conducted on behalf of a CATV system or a television broadcast station, until March 31, 1973. Such surveys, when allowed, will be permitted to show only that there is a greater viewing share than that contained in the new FCC rules. Surveys must be conducted by an independent consultant and must be of representative viewing weeks at least 30 days apart. Furthermore, such special surveys must have an accuracy of within one standard error (over 99% accuracy).

For purposes of determining local signals other than those significantly viewed, markets 1 - 100, markets 101 and smaller, and areas outside all markets are treated differently.

In markets 1 - 100, local signals are considered to be those of television stations within 35 miles of the CATV community (where major markets overlap, the CATV community must be wholly within the 35-mile zone of both major markets), Grade B or better quality ETV signals, the signals of 100-watt translators licensed to the CATV community, and, of course, the significantly viewed stations. When network signals or independent signals are added to bring the CATV system up to a full minimum service complement, the number of wild card signals allowed will be reduced accordingly.

In markets 101 and smaller, local signals are considered to be those of all television stations within 35 miles of the CATV community, Grade B or better quality signals of educational television stations, Grade B or better quality signals from television stations in other smaller television markets, the signals of television stations from other cities in the same small market, the signals of 100-watt translators licensed to the CATV community, and significantly viewed stations.

For cable television system communities located outside of all television markets, local signals are considered to be those which provide a Grade B or better quality television signal in the CATV community, the signals of 100-watt translators licensed to the CATV community, the signal of all educational television stations licensed to the communities within 35 miles of the CATV community, and significantly viewed stations.

Leapfrogging To prevent leapfrogging, the Commission treats the importation of full network stations and independent stations differently. For importation of full network stations, the CATV system operator must choose either the nearest full network station or the nearest in-state full network television station, at the CATV system operator's option. For importation of independent television station signals, the CATV system may import the signal from anywhere, except that if it chooses to import a signal from one of the 25 largest television markets, the CATV system must choose a signal from one or both of the two nearest of the top 25 markets. In

cases where a third independent signal is allowed, in order to bring the CATV service up to a minimum service complement, the third independent must be a UHF television station from within 200 miles (if no such UHF is available then the CATV system has a choice between a VHF television station within 200 miles or a UHF station from anywhere in the country).

Waivers will be considered with respect to importation of network signals which are not the closest or the closest in-state, for good cause shown. However, no grants of waivers are anticipated when independent signals are imported.

When the programming on the signal of a distant independent television station is blacked out due to exclusivity requirements, the CATV system operator may substitute independent programming from stations anywhere in the nation. When such substitutions are made, the CATV system operator may carry the substituted program to its conclusion. In addition, the CATV system operator may delete non-network programs on imported television signals where the program is of peculiarly local interest in the distant market. Presumably, the determination of what programs are of local interest to the distant market is up to the CATV system operator.

EXCLUSIVITY

The new rules (Section 76.91 through 76.97) provide that network programming of network affiliated television stations will be protected only if the more distant station's programs simultaneously duplicate those of a more local station. The priority of protection remains the same as in the existing rules (i.e., principal city over Grade A; Grade A over Grade B, etc.).

Even though network stations are entitled to simultaneous duplication only, there is an exception where programs are delayed by reasons of time zone changes. In such cases the television broadcast station may, within 15 days of the effective date of the rule, ask the Commission to waive the simultaneous non-duplication protection and retain same day non-duplication protection. However, a CATV system need not delete network programming if such deletion would result in the provision of less than the programs from two network stations. Furthermore, the CATV system need not delete lower priority signals broadcast in color when the higher priority station is broadcasting the station in black-and-white, or where the lower priority station presents the program in prime time and the higher priority station does not.

The rules (Sections 76.151 through 76.157) also provide for additional exclusivity to be granted to independent television stations for "syndicated" programming. Such additional new exclusivity is granted to local stations against distant stations only.

Markets 1 - 50 In the 50 largest television markets the rules provide for one year protection (pre-clearance) from the date that a wholly newly created program is first sold or licensed anywhere in the country. During that year CATV systems may not import such programs into any of the top 50 television markets. Thereafter local stations will be protected for the run of their exclusive copyright contract provided that such contract is specifically exclusive with respect to showings by television

stations for broadcast presentation and for cable distribution. The burden of notifying CATV system operators of the date that newly created programs are first sold will be upon the copyright owner requesting exclusivity.

Markets 51 - 100 In markets 51 through 100, the exclusivity rules are divided into six categories:

1. For series programs which have had a prior showing on network television, the programming is protected for one run or one year from the broadcast of the first episode of the series in the market whichever is the shortest period.

2. For series which have had no previous network exposure, the protection will end two years from the broadcast of the first episode in the series in the market.

3. For programs which are non-series but which are neither feature films nor other special products, protection will end two years from the date that the program first becomes available in the market.

4. For feature films, protection will end two years from the date the feature film first becomes available in the market.

5. Other programs are protected for one day after first non-network broadcast in the market or one year from date of purchase, whichever occurs first.

6. Where a distant station broadcasts a program in prime time and the same

program is not broadcast in prime time by the local television station, the exclusivity protection rule does not apply.

With respect both series which have had prior network exposure and those which have not had prior network exposure, CATV systems may import and carry such programs prior to the first broadcast by any television station in the market. For first run non-series programs and feature films, CATV systems may import and carry those programs prior to the date that they first are made available in the market.

In the case of program series, all of the episodes are treated as a single unit and are not protected on a single episode basis. Except for preclearance protection the burden of notification is upon the local television broadcaster who is requesting exclusivity protection. In cases where CATV systems substitute programs from distant stations to fill up channels blacked out by such exclusivity, the burden of identification as to which programs are subject to exclusivity protection shifts to the CATV operator. In all cases the CATV system operator must maintain a log of the distant signals imported and the programs which are carried by the CATV system as a result of importation of those distant signals.

In order to obtain program exclusivity, the broadcaster must notify the CATV system operator no later than the Monday prior to the following broadcast week of the date and time of his television broadcast and the date and time of the program to be deleted. In any event, such notification must not be less than 48 hours before the local broadcast. With respect to network exclusivity protection, such protection will be automatically stayed if a CATV system requests a waiver of the rule within 15 days of the request.

CATV operators and television broadcasters alike are likely to encounter difficulty with the exclusivity provisions of the rules. Part of that problem will be

caused by the generality of the definitions of the various program categories, which follow in their entirety:

> Network programming. The programming supplied by a national or regional television network, commercial or noncommercial.
>
> Syndicated program. Any program sold, licensed, distributed, or offered to television station licensees in more than one market within the United States for non-interconnected (i.e., non-network) television broadcast exhibition, but not including live presentations.
>
> Series A group of two or more works which are centered around, and dominated by the same individual, or which have the same, or substantially the same, cast of principal characters or a continuous theme or plot.
>
> Off-network series A series whose episodes have had a national network television exhibition in the United States or a regional network exhibition in the relevant market.
>
> First-run series A series whose episodes have had no national network television exhibition in the United States and no regional network exhibition in the relevant market.
>
> First-run, non-series programs Programs, other than series, that have had no national network television exhibition in the United States and no regional network exhibition in the relevant market.

The text of the FCC's Report and Order gives no aid in distinguishing between the various types of syndicated programming.

However, some basic conclusions can be drawn. "Gunsmoke" is a network series, but when early episodes were sold in syndication to independent stations, the series was sold under the title of "Marshal Dillon." "Marshal Dillon" is therefore an "off-network series." "Truth or Consequences" has never had a national network distribution but is sold in syndication to network-affiliated and independent stations, and is therefore a "first-run series." First-run non-series programs are those programs, usually "specials," which have never had network distribution but which are sold to individual stations. Feature films include made-for-TV movies and those originally produced for neighborhood theatre exhibition. The "other program" category, is a catch-all for programs not fitting into any other category and will usually involve a "special" which has had network exhibition.

Some television programs almost defy classification, such as "Romper Room," in which the format is sold in syndication, but which is locally produced by individual television stations. Presumably, "Romper Room" is a "first-run series" because it has a continuous theme, but such programs will require clarification as to status by the Commission.

As an example of how exclusivity would apply, assume that the "David Frost Show" had never been broadcast in the market and was sold to television station X in Market 52. But X decides not to begin broadcasting the show until September 3, 1972. A CATV system could import "David Frost Show" until September 2, 1972, and could resume importation of "David Frost Show" on September 4, 1974. If "David Frost Show" had already been broadcast by television station Y in the 52nd market from February 1, 1970 until January 31, 1972, the CATV system in market 52 could begin importation of duplicating "David Frost Show" episodes on March 31, 1972.

Obviously, in considering exclusivity protection of any syndicated program or series, three dates

should be ascertained: The date it first became licensed or sold in the country; the date it is first sold in the market; and, the date it is first broadcast in the market.

It is of utmost importance that each feature film, program, or series be carefully examined and checked against the "exclusivity notices" sent to the CATV system by television broadcasters prior to carriage on a CATV system.

NONBROADCAST CHANNELS

The FCC's approach, in the top 100 markets where distant signals are now being permitted, is an insistence on the expansion of a CATV system's channel capacity to accommodate all reasonable demands. CATV systems cannot accept broadcast signals which will be made available without also accepting the obligation to provide nonbroadcast bandwidth and access services.

Minimum Channel Capacity CATV systems in the top 100 markets (within 35 miles) will be required to have at a minimum a 20 channel capacity. For each broadcast signal carried, a CATV system in the top 100 markets will have to provide an additional channel, 6 MH_Z in width, suitable for transmission of nonbroadcast signals. New systems must build in the capacity immediately, and currently operating systems have five years to comply.

CATV systems in the top 100 markets must also provide three dedicated channels: (1) public access channel on a nondiscriminatory and free basis (only production costs for live presentations over five minutes in length will be chargeable to users); (2) an educational channel; and (3) state and local government channel. The educational and government channels must be provided free until five years after completion of the system's basic trunk line (production costs are chargeable to the user). The remainder of required nonbroadcast bandwidths are to be made available for lease. At least one of these lease channels must give priority to part-time users.

Expansion of Capacity Should demand for nonbroadcast channels result in all of the system's channels being in consistent use during 80% of the weekdays (Monday thru Friday) for 80% of the time during any three-hour period for six weeks in a row the system will have six months in which to make a new channel available.

The FCC will issue new proceedings to deal with the question of rates for leased channels. The Commission is aware that requiring increased capacity may impose an

undue burden on the CATV system if it is necessary to rebuild or add extensive new plant. However, the Commission also points out that new top 100 market CATV systems' capacity should be built with potential that takes the future into account. In any event this formula and its effects will be reviewed continually.

Two-way Capacity New CATV systems in the top 100 market must have built-in two-way capacity on at least a non-voice basis (e.g., for surveys, marketing services, burglar alarms, educational feedback). The Commission, however, believes it premature to require the installation now of the necessary return communications equipment at each subscriber's home. The Commission requirement of two-way capacity is an attempt to insure that new major market systems be built with the potential of eventually providing two-way communications to avoid future time-consuming and costly rebuilds.

Regulations Applicable to Channels Presenting Nonbroadcast Programming: Because nonbroadcast channels are integrally bound up with CATV carriage of broadcast signals, the FCC has preempted all regulation of access and leased channels with the exception of regulation of the local government channel. Thus, almost no local or state regulation of these channels will be permitted whether or not it is inconsistent with the FCC's rules.

In communities outside the top 100 markets where access channels are not required, the Commission will permit local authorities to require access service, so long as it is not in excess of what is required in the top 100 markets as specified above. It would appear, however, that local authorities could require greater than 20 channel capacity in the major markets since the FCC established this as a "minimum."

The Commission grandfathered those franchise specifications concerning the number of dedicated channels for systems in operation prior to March 31, 1972.

It also warned franchising authorities against burdening an applicant by requiring more access channels as a condition to obtaining the franchise.

Public Access Cable systems, themselves, will be required to establish their own rules for use of their public access and educational channels. They must be kept on public file in the system's headquarters and filed with the Commission within 90 days after a system first activates any such channels.

These rules must specify that access will be nondiscriminatory without charge for time on a first come, first served basis. The rules must also proscribe the presentation of advertising, lottery information, and obscene or indecent matter (modeled after the prohibitions on any CATV system origination in §76.213 and 76.215, respectively). The regulations shall also require identification and addresses of persons or groups seeking access be obtained and kept on public file for two years. While the Commission recognizes that open access presents some risk it decided that the CATV operator must not censor or control program material presented on the public access channels.

Leased Channels As to leased channels the rules to be promulgated by the CATV system channels are generally of the same type as for the public access channels. There can be no censorship, leasing under an established rate schedule must be non-discriminatory on a first come, first served basis and names and addresses of those leasing the channels must be obtained. However, in contrast with the CATV origination rules, commercials on leased channels will not have to be at natural breaks.

Local Origination The cablecasting rules remain unchanged. In summary, the regulations apply the fairness doctrine and equal time provisions, require sponsorship identification, proscribe the cablecasting of lottery information and obscenity, and permit commercials only at natural breaks.

The mandatory origination rule for systems with more than 3,500 subscribers remains, although its applicability is stayed pending the Supreme Court's review of the Midwest Video v. FCC case. For pay-cable channels, the anti-siphoning provision remains, and there is a new rule prohibiting commercials except for promotion of upcoming pay-cable programs.

Liability CATV operators' concern about civil liability from possible libel suits is known to the FCC. The Commission suggests that the potential of such legal actions is severly restricted as a result of Supreme Court decisions in New York Times Co. v. Sullivan and Rosenbloom v. Metromedia, Inc. The Commission said that since most users of access or leased channels will air "matters of public or general interest", as expansively defined in Rosenblum, actual malice or intent to harm would have to be proven. The FCC maintains that such malice could not be imputed to a CATV operator who has no control over the given program's content. Even where the material presented on an access or leased channel fell outside the Rosenblum case the Commission argues that its no censorship regulations would have the "force of law" and any state law imposing liability on a system which has no control over these channels might be unconstitutional. To remedy this uncertainty the FCC asks Congress to enact clarifying legislation. While Section 315 (equal time) and the fairness doctrine are still applicable to programming originated by the CATV operator, such rules are not imposed on the CATV access channels since they are free of operator control.

Production Facilities The FCC is requiring CATV operators in the top 100 markets to maintain production facilities for the public access channel. No specifics are provided as to the type or amount of equipment necessary and the access, leased and originated programming presently will not have to meet any technical standards.

Applicability The above rules will be applicable to all new systems operating after March 31, 1972 in the top 100 markets. Existing systems in those markets will have five years to comply.

System operators in small communities in the top 100 markets may meet their access obligations through co-operation with CATV systems in larger areas. Where a system remains unduly burdened by these requirements a waiver request can be made with a detailed showing of such burden.

TECHNICAL STANDARDS

The Commission has made three decisions which control the basic design for new systems.

First is the requirement of "capacity" for upstream operation for at least a non-voice, two-way operation at some reasonable future date. Second is the requirement for a minimum channel capacity of at least 20 channels with the added provision that all Class I channels utilized must be matched with an equal number of channels available for Class II or III signals. Third is the Commission's rejection of the FAA's request that certain critical frequency ranges used by the FAA for air navigation and air-traffic control be avoided and reserved exclusively for their purposes. Instead, the Commission chose only to impose radiation restrictions that can be met rather reasonably by normal cable installations, thus allowing the cable industry the needed flexibility for full usage of the frequency spectrum.

Unauthorized radiation for a cable system is the responsibility of the operator. Any radiation exceeding the specified limits must be brought under control immediately, even if the originating source is a subscriber's TV set, if the radiation occurs from the cable by transfer of RF power.

The Commission avoided technical standards for video techniques for Class II operators in order to avoid unduly burdening innovators who are now struggling to implement these services.

The FCC has purposely left the door wide open for the industry to intently pursue the development of standards and regulations for television receivers designed to enhance cable advantages.

The technical standards (Sections 76.601-76.617) are designed so that a minimum burden is placed upon the cable operator. The liberal use of NCTA standards of

performance and measuring techniques is noted. In cases where an ititial burden would be placed on a small operator, some requirements are relaxed slightly. Choices of measuring techniques are allowed to offer some degree of flexibility for individual systems. These allowances obviously are subject to limits of good engineering practices, and are subject to justification.

The Commission established a schedule requiring the operator to conduct complete performance tests at least once each calendar year. These performance tests involve measurement of certain parameters and must be taken at a minimum of three widely spaced points in the system; at least one of which is representative of the most distant terminal. This method of sampling and the measurements that are involved are consistent with reasonable preventive maintenance procedures. It is anticipated these measurements, at least on an abridged schedule, would be performed as a routine of system operation.

Following is a summary of the principal technical standards required by the FCC:

SUMMARY OF TECHNICAL STANDARDS

1.	Frequency of the visual carrier:	1.25 MHz $\pm$ 25 kHz above channel boundary
	a. At output of converter:	1.25 $\pm$ 250 kHz
2.	Frequency of aural subcarrier:	4.5 MHz $\pm$ 1 kHz
3.	Minimum visual signal level:	1 mV across 75 ohm
4.	Permissible signal level variation:	12 dB total
	a. Maximum adjacent channel variation:	3 dB
	b. Maximum of all channels:	12 dB

SUMMARY OF TECHNICAL STANDARDS
(continued)

5.	Maximum signal level:	Below threshold of degradation
6.	Maximum hum and low frequency disturbance level:	5%
7.	Within channel frequency response:	± 2 dB
8.	Aural signal level:	13 to 17 dB below visual signal level
9.	Signal to noise level for all signals picked up or delivered within its Grade B contour:	36 dB 1/
10.	Signal to intermodulation and non-offset carrier interference:	46 dB
11.	Subscriber terminal isolation:	18 dB or more if required

Considerable latitude has been provided in the taking of performance data for compliance. If other than NCTA measuring standards are used, sufficient justification must be provided so that a judgement on validity may be made.

The FCC has not imposed any restriction on frequency usage. Unauthorized radiation at any frequency from a cable system is, however, the responsibility of the cable operator. The new radiation limits are:

1/ Includes co-channel interference from offset-carrier assigned signals

Frequencies (MHz)	Radiation Limit (microvolt/meter)	Distance From Cable (feet)
Up to 54	15	100
54 to 216	20	10
Over 216	15	100

Left unresolved, and thus presenting objectives for the cable industry, are the following technical issues:

-standards for a cable television receiver.

-frequency allocations within the cable network.

-standards for Class II, III and IV channels.

-standards on envelope delay, differential gain and phase.

-standards on permissible cross-modulation, "ghosting", hum.

-standards for cable carriage of aural broadcast programming.

FEDERAL/STATE/LOCAL RELATIONSHIPS

In 1970 the FCC noted the rapid development of cable television was leading to overlapping and sometimes incompatible federal and local regulation. The Commission found some need to clarify the respective roles of the federal, state and municipal regulatory bodies.

Preemption In this new Report and Order, the Commission explicitly stopped short of complete federal preemption, opting instead for an intentional dual system. In short, there will be exclusive federal regulation of some aspects and local (municipal or state) regulation of other aspects.

Franchising Guidelines Generally, the whole matter of franchising has been left to the localities with some guidelines set out by the Commission. These guidelines (Section 76.31) will be administered through the certificating process, i.e., before a cable system can obtain the required certificate of compliance from the Commission (Section 76.11), it will have to produce its franchise and show that the following minimum standards have been met:

There should be a public invitation for applications; all applications should be in a public file; a public hearing should be held; and a published decision must be released by the franchising authority.

Although not stated in the rule, the Commission emphasized that while the boundaries of the franchise area is up to the local authorities, a plan to bring cable only to the affluent area of a city will not be approved, and equitable construction throughout the franchise area is required.

There must be a "significant construction" figure for the first year and a "substantial percentage" extension of energized trunk cable for each ensuing year. Twenty per cent of the franchise area per year is suggested in the text, but this is a guideline only and is not written into the rule.

A "reasonable duration" for the franchise period and any renewal is required. No figure is given, but the Commission appears to frown on very long terms, and a tentative fifteen year maximum is suggested in the text.

Rate regulation is left to local localities. The franchising authority must specify or approve the initial installation charge and subscriber rate. Any subsequent rate change must also be decided on by the franchising authority after a public proceeding.

The franchise must also set up procedures for dealing with service complaints, and the maintenance of a local business office or agent is required for this purpose.

The final requirement deals with the franchise fees which local authorities can impose. The fee must be "reasonable," with 3-to-5 percent of gross revenues per year suggested as a maximum.

If the fee exceeds three per cent, the franchisee must demonstrate to the Commission the fee will not impair the system's ability to comply with federal regulatory goals, and the franchising authority must show that the fee is needed for the local regulatory program.

These requirements apply to all cable systems going into operation after March 31, 1972. Cable systems in operation as of that date must come into compliance by March 31, 1977, or at the expiration of their current franchise, whichever comes first.

The Commission will have a standing committee of government, cable, and public interest representatives to advise it on appropriate future allocations of regulatory responsibilities.

In sum, exclusive federal regulation exists in such areas as signal carriage, non-duplication, program exclusivity, origination and pay-cable. This Report and

Order also preempts localities from regulating access channels, and communities can require no additional dedicated channels beyond the number set by the Commission. Furthermore, the rules governing the use of these channels are an exclusive province of the Commission.

The new technical standards are a minimum and there appears to be room for added local regulation at this time.

OTHER MATTERS

Certification In order to insure effective public notice of new proposals and their consistency with the rules, the Commission requires that no new cable service can begin without first obtaining a certificate of compliance from the Commission (Section 76.11). This includes all cable systems not in operation as of March 31, 1972, and all existing cable systems desiring to add any new broadcast signals. All other cable systems must obtain a certificate by March 31, 1977, or when their current franchises expire, whichever comes first.

Following is the information which must be submitted by a cable system applying for a certificate: First, the system's name, address, community of service, proposed commencement date, broadcast (television and radio) stations to be carried (including proposed stations to be used for substitute programming), and whether microwave is to be used; second a copy of FCC Form 325; third, a copy of the franchise; fourth, a statement demonstrating compliance with the Commission's access and signal carriage rules, and an affidavit of notice to the appropriate broadcast stations and authorities. The application must be accompanied by a $35 fee.

Public notice will be given to all applications. Persons having objections must file them within 30 days. The Commission will then act on the application, considering only the objections pertaining to carriage and program exclusivity. Even there, objectors will have a heavy burden in order to dissuade the Commission from granting applications which are prima facie consistent with the rules. Generally, a rapid "go-no go" system is envisioned. Other objections will be considered petitions for special relief to be acted on after the certification is complete.

Pending Proceedings In adopting the new rules, the Commission changed, disposed of, or mooted several types of pending proceedings, as follows. Requests for waiver of the carriage rule must be supplemented within 90 days after March 31 or they will be dismissed as moot. Requests

for waiver of the non-duplication rule will remain on file, and requests for same-day protection will be treated as requests for simultaneous network exclusivity. Section 74.1105 notices will remain on rule and can be used in certificate applications. Major market distant signal waiver requests under Section 74.1107 will be dismissed as moot within 90 days unless incorporated into certificate applications under new Section 76.13. Petitions activating Section 74.1105(c)'s automatic stay will be dismissed as moot. Requests for distant signal importation into markets below 100 will be dismissed as moot within 90 days unless incorporated into certificate applications. Special petitions under Section 74.1109 will be dismissed as moot within 90 days unless supplemented to show relevance to the new rules. Reconsideration petitions relating to prior FCC actions and hearings frozen in the December 13, 1968, order will be disposed of consistent with the new rules. Finally, all pending microwave applications must be supplemented within 90 days to show that any needed certificates of compliance have been filed, or be dismissed.

Fees The Commission will initiate a rulemaking to determine an appropriate fee for the certification process. In the meantime, Section 1.1116 requires that $35 accompany each application for each community except that only $10 more per community is needed where there is a common headend and identical ownership. Fees which have already been paid for pending petitions can either be refunded on request or applied to the certification fee, where applicable.

CAR and LDS Services The Commission has reorganized its existing rules governing the issuance of cable television relay (CAR) and local distribution services (LDS) station licenses into a new Part 78. No changes have been made in the rules.

Logging and Record-Keeping All new top 100 market cable systems must keep a public record for two years of all television stations carried and the names of all programs scheduled to be shown.

In addition, a public record must be kept of the rules governing access channels as well as a log of those persons requesting time, and a record of cablecasts by political candidates.

Rulemakings The Commission promised future rulemaking proceedings on fees and certain technical matters. Proceedings were instituted in the areas of radio signal importation and carriage of sports programs.

Radio Signal Carriage In the radio proceeding, (Docket No. 19418) the Commission asked for comments on various issues relating to radio signal carriage. No particular solution was proposed.

As an interim policy, the Commission rules that new cable systems in communities with less than 50,000 people, must also carry all local radio stations of the same type (AM or FM) if they wish to carry distant radio signals (from a community more than 75 miles away). This is a pre-condition for certification.

Carriage of Sports The Commission proposed in Docket No. 19417 prohibition of the carriage of any sports event where the cable system is within the Grade B contour of a television station located in the home city of a team in that sport when that team was playing at home, unless the event was being shown on a local or significantly viewed station, or the home team and league had given consent.